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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,897	02/27/2004	Jon-Michael Kasten	100993.00007	9307
26710	7590	01/06/2006	EXAMINER	
QUARLES & BRADY LLP 411 E. WISCONSIN AVENUE SUITE 2040 MILWAUKEE, WI 53202-4497			EDELL, JOSEPH F	
		ART UNIT	PAPER NUMBER	
		3636		

DATE MAILED: 01/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/789,897	KASTEN, JON-MICHAEL
	Examiner	Art Unit
	Joseph F. Edell	3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 03 October 2005.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-23 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-23 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 27 February 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 15 is objected to because of the following informalities: "claim 12" (line 1) should read --claim 14--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 21-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims recite the limitation that the torso of a person is unrestrained by the hip control apparatus. However, the application as originally filed did not recite this limitation. Moreover, page 6, lines 1-3 of the application suggest that the hip supports can tilt such that the torso of the user may be restrained.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 5, 6, 10, 11, 21, and 22, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,154,487 to Warburton.

Warburton discloses a hip control apparatus that includes all the limitations recited in claims 1-3, 5, 6, 10, 11, 21, and 22, as best understood. Warburton shows a hip control apparatus having a first padded hip support 16 (Fig. 3) on one side of a seat (Fig. 1), a first flexible arm (Fig. 3) extending forward from the first padded hip support, a second padded hip support 18 (Fig. 3) on an opposite side of the seat, a second flexible arm extending forward from the second padded hip support, a seat belt 22 (Fig. 1) with a first segment attached to the first padded hip support and a second segment attached to the second padded hip support, a connector 46,48 (Fig. 3) to secure the first and second segments together, a bracket/fastener 38a,42a (Fig. 3) on each of the first and second padded hip supports capable of coupling the apparatus to a seat back of the seat, and a main portion (Fig. 3) of each of the first and second padded hip supports capable of abutting the hip of a person wherein securing the first and second segments together causes the first and second arms to bend around the person, and first and second resilient pads of the first and second padded hip supports are fabricated of foam cell material.

#### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 12, 13, 18, and 23, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Warburton in view of U.S. Patent No. 5,148,563 to Klearman et al.

Warburton discloses a hip control apparatus that is basically the same as that recited in claims 12, 13, 18, and 23, as best understood, except that the first and second padded hip supports lack plate structures, as recited in the claims. See Figures 1-3 of Warburton for the teaching that the height of the arm of each of the first and second padded hip supports is less than the height of the respective main portion. Klearman et al. show a hip control apparatus similar to that of Warburton wherein the hip control apparatus has first and second padded hip supports (see Fig. 4) with main portions, arms, and pads, a plate structure 52 (Figs. 3 and 9) extending through the main portions and arms of the first and second padded hip supports, and a seat belt (Fig. 4) with first and second segments 66,68 attached to the first and second padded hip supports. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the hip control apparatus of Warburton such that the first and second padded hip supports each have a plate structure extending through the main portion and the arm wherein the first and second segments of the seat belt are coupled to the plate structures of the first and second padded hip supports, such as the hip control apparatus disclosed in Klearman et al. One would

have been motivated to make such a modification in view of the suggestion in Klearman et al. that the plate structure provides lateral support for the person.

8. Claims 4, 7-9, 14, 15, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warburton in view of Klearman et al. as applied to claims 12, 13, and 18 above, and further in view of U.S. Patent No. 3,640,571 to Keropian.

Warburton, as modified, discloses a hip control apparatus that is basically the same as that recited in claims 4, 7-9, 14, 15, 19, and 20 except that the first and second padded hip supports lack primary and secondary plates as well as first and second anchors, as recited in the claims. See Figures 1-3 of Warburton for the teaching that the first segment of the seat belt has an end portion connected to one component of the connector, the second segment of the seat belt has an end portion connected to another component of the connector, and the first and second resilient pads are attached to both the main portions and arms of the first and second padded hip portions. Keropian shows a hip control apparatus similar to that of Warburton wherein the hip control apparatus has first and second padded hip supports 16 (see Fig. 2), brackets 24 of the first and second padded hip supports, a plate structure 66 extending through main portions of the first and second padded hip supports rendering the main portions less flexible, a seat belt 22 with first and second segments coupled to each plate structure, and first and second anchors of the seat belt connected to the brackets. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the hip control apparatus of Warburton such that the plate structures of Warburton, as modified, that extend through the main portion

and the arm function as resiliently flexible primary plates, the first and second padded hip supports have secondary plates in the main portions rendering the main portions less flexible than the arms, the first and second segments of the seat belt are attached to one of the primary plate, the secondary plate, and the bracket/fastener, the first segment of the seat belt has a first end portion secured to a first anchor attached to the first padded hip support and a second end portion connected to one component of the connector, the second segment of the seat belt has a third end portion secured to a second anchor attached to the second padded hip support and a fourth end portion connected to another component of the connector wherein each of the first and second anchors are connected, via one of the plate structures, to the bracket, such as the hip control apparatus disclosed in Keropian. One would have been motivated to make such a modification in view of the suggestion in Keropian that the plate structures in the main portions of the first and second padded hip supports provide an arching, relatively rigid shape to the main portions for fitting laterally against sides of the person, and the anchors allow for attachment of the seat belt to the plate structure via threaded bolts.

9. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Warburton in view of Klearman et al. as applied to claims 12, 13, and 18 above, and further in view of U.S. Patent No. 5,354,121 to Allum.

Warburton, as modified, discloses a hip control apparatus that is basically the same as that recited in claim 16 except that the arms lack first and second guides, as recited in the claim. Allum shows a hip control apparatus similar to that of Warburton wherein the hip control apparatus has first and second arms 53,53a (see Fig. 2) of

padded hip supports that include first and second guides 57a,57b engaging first and second segments 55a,55b of a seat belt. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the hip control apparatus of Warburton such that the first and second padded hip structures has first and second guides attached to the arms and engaging the first and second segments of the seat belt, such as the hip control apparatus of Allum. One would have been motivated to make such a modification in view of the suggestion in Allum that the first and second guides provide retaining loops for the seat belt to be properly aligned around the person.

10. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Warburton in view of Klearman et al. as applied to claims 12, 13, and 18 above, and further in view of U.S. Patent No. 4,073,537 to Hammersburg.

Warburton, as modified, discloses a hip control apparatus that is basically the same as that recited in claim 17 except that the main portions lack a circular shape, as recited in the claim. Hammersburg shows a hip control apparatus similar to that of Warburton wherein hip control apparatus has first and second padded hip supports 34 (Fig. 2) with main portions of circular shape. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the hip control apparatus of Warburton such that the main portions have a circular shape, such as the hip control apparatus disclosed in Hammersburg. One would have been motivated to make such a modification in view of the suggestion in Hammersburg

that the oblong pads may be easily rotated and adjusted to contact the hip, torso, and thigh of the person.

### ***Response to Arguments***

11. Applicant's arguments filed 03 October 2005 have been fully considered but they are not persuasive. Applicant states that claim 15 has been amended, but claim 15 appears to include the text as originally filed.

In response to Applicant's argument that the control apparatus of Warburton supports the torso and lumbar region of a user while the control apparatus of the instant application supports the hips of a user, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this instance, the control apparatus of Warburton is capable of supporting the hips of a user that is of above average height or when the control apparatus is positioned adjacent the seat bottom of a chair.

Next, Applicant argues that the teachings of Warburton in view of Klearman et al. fail to meet the limitation of claim 12 wherein a connector secures the first and second segments of the seat belt together across the lap of a user. However, Figure 1 of Warburton shows a user having the first and second segments of the seat belt secured together across the lap of the user. While the first and second segments may not be in direct contact with the lap of the user, the seat belt of Warburton extends across the lap

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of the user. Moreover, this is merely a recitation of the intended use of the claimed invention. The control apparatus of Warburton is capable of performing the intended use, therefore, it meets the claim limitations. Applicant's arguments toward the straps of Klearman et al. are inapplicable because the plate structures of Klearman et al. are relied upon to teach that one skilled in the art would have been motivated to modify the control apparatus of Warburton to include plate structures.

With respect to Applicant's argument that Klearman et al. fail to teach plate structures in a resiliently flexible arm, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this instance, Warburton teaches a control apparatus having a main portion and arms wherein one of ordinary skill would have been motivated to modify the main portion and arms of Warburton to include plate structures extending therethrough, such as the control apparatus disclosed in Klearman et al.

With respect to Applicant's argument that Klearman et al. fail to teach first and second segments of the seat belt coupled to the plate structure because the first and second segments are not in direct contact with the plate structure, Applicant interprets this limitation to narrowly. The teachings of Klearman et al. meet this limitation because the first and second segments 66,68 are coupled to the plate structures via the exterior cover and cushioning material that surrounds the plate structures.

With respect to Applicant's argument that Keropian fails to teach a resiliently flexible primary plate, the plate of Keropian is specified as being preferably of metal which meets the limitation of claims 4 and 7-9 because the plate of Keropian inherently exhibits resilient flexibility. The instant application does not specify a range of flexibility that is required by the primary plate. Therefore, the metallic plate of Keropian meets the limitation of a resiliently flexible primary plate. Also, Applicant argues that Warburton, as modified, in view of Keropian fails to teach "a flexible secondary plate which cooperates with the primary plate to provide regions of different flexibility." However, this limitation is not recited in claims 4 and 7-9. Moreover, the modified plate structures of Warburton, in view of the teachings of Keropian, include secondary plates in the main portion rendering the main portion less flexible than arm.

With respect to Applicant's argument that it is unclear how one of ordinary skill would combine the teachings of Hammerburg in view of Warburton, see the above rejection for further explanation. Also, the rejection under 35 USC 103(a) drawn toward claim 16 was argued solely on the premise that the cited art does not teach or suggest the control apparatus recited in amended claim 12, and as a result the above 35 USC 103(a) rejection of claim 12 remains.

Upon consideration of the Applicant's arguments, Examiner maintains the rejections of claims 1-20 and rejects new claims 21-23.

***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

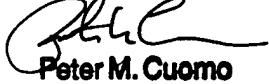
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (571) 272-6858. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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JE  
January 3, 2006

  
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